

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

COMMONWEALTH OF VIRGINIA, *ex rel.*

**VIRGINIA LINEN SERVICE, INC.,
Complainant,**

v.

CASE NO. PUE990106

**VIRGINIA ELECTRIC AND POWER COMPANY,
Defendant.**

HEARING EXAMINER'S RULING

June 15, 1999

On March 1, 1999, Virginia Linen Service, Inc. ("Virginia Linen") filed a formal complaint against Virginia Electric and Power Company ("Virginia Power" or "Utility") pursuant to Rule 5:6 of the Commission's Rules of Practice and Procedure.¹ In its Petition, Virginia Linen seeks the benefits of the Utility's Schedule 10 Rates, implemented in August 1996, pursuant to its request to Virginia Power under Virginia Code § 56-234.1 in February 1996. On May 19, 1999, the Commission entered a Preliminary Order in which it directed Virginia Power to file a response to Virginia Linen's formal complaint by June 9, 1999, and assigned the matter to a Hearing Examiner.

On June 9, 1999, Virginia Power filed its Answer, Motion to Dismiss, and Motion for More Definite Statement. In its Answer, Virginia Power admits to receiving a letter from Virginia Linen dated February 7, 1996, seeking a determination that Virginia Linen was on the Utility's most economical rate available. Virginia Power also asserts that its response, dated June 6, 1996, correctly informed Virginia Linen that it was on the Utility's most economical rate. Virginia Power further states: (i) that as of June 6, 1996, Virginia Linen did not qualify for Rate Schedule 10, which at that time was an experimental rate, only available to 200 customers and required a minimum supply of 500kW; (ii) that on June 24, 1996, the Utility formally requested removal of the 200-customer limit and experimental status of Rate Schedule 10; (iii) the Utility's requested changes to Rate Schedule 10 became effective on July 24, 1996 for service rendered on and after August 1, 1996; (iv) that on February 10, 1997, Virginia Linen sought a determination that it was on the Utility's most economical rate; (v) that pursuant to this request, Virginia Power eventually determined that Rate Schedule 10 offered the most economical rate for Virginia Linen. Therefore, on June 26, 1997, the Utility moved Virginia Linen to Rate Schedule 10, retroactive to February 1997.

¹ 5 VAC 5-10-320.

Virginia Power denies that Virginia Linen is entitled to the benefits of Rate Schedule 10 any earlier than February 1997. By contrast, Virginia Linen argues that it is entitled to the benefits of Rate Schedule 10, retroactively to August 1, 1996.

In its Motion to Dismiss, Virginia Power argues that its initial determination as of June 6, 1996, was correct and that Virginia Code § 56-234.1 does not impose an obligation on a utility to continuously monitor a customer's account in order to notify the customer of any subsequent rate changes. Rule 5:16(d)(i) of the Commission's Rules of Practice and Procedure² defines a motion to dismiss as the proper responsive pleading for testing the legal sufficiency of a petition, but makes clear that any alleged legal insufficiency should be apparent on the face of the petition. I find the Petition does not suffer from such legal insufficiency. To the contrary, there are allegations in the motion that are controverted and thus raise questions of fact. For example, whether Virginia Power's initial determination as of June 6, 1996 was correct raises a question of fact. Consequently, it is necessary to receive evidence relative to the circumstances surrounding the Petition and to consider further argument regarding the requirements of § 56-234.1.

As to Virginia Power's Motion for More Definite Statement, Rule 5:16(d)(ii) of the Commission's Rules of Practice and Procedure³ provides for such a motion when the initial pleading "is so vague, ambiguous, or indefinite as to make it unreasonably difficult to determine a fair and adequate response" Upon review of Virginia Linen's Petition and Virginia Power's Answer, I find the specificity of the Petition permitted Virginia Power a fair and adequate response.

Therefore, upon consideration of the Petition and pleadings filed herein, I find Virginia Power's Motion to Dismiss and Motion for More Definite Statement should be *denied*. I further find that a hearing should be scheduled to receive evidence on the Petition, and that all testimony and exhibits to be presented in this case should be prefiled with the Commission, and later sponsored and subject to cross-examination on the hearing date. Accordingly,

IT IS DIRECTED:

(1) That a public hearing is scheduled for September 28, 1999, at 10:00 a.m. in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving evidence relevant to the Petition;

(2) That, on or before July 20, 1999, Virginia Linen shall file with the Clerk of the Commission an original and ten (10) copies of any prefiled direct testimony and exhibits it intends to offer at the hearing. The prefiled direct testimony of Virginia Linen should be in the form of questions and answers, which clearly state the nature of the claim, the specific relief sought, and the legal and factual reasons supporting the claim. Virginia Linen shall also serve a copy of its prefiled direct testimony and exhibits on Pamela Johnson, Esquire, and Karen L. Bell, Esquire, Virginia Electric and Power Company, P.O. Box 26666, Richmond, VA 23261-6666;

² 5 VAC 5-10-420 E 1.

³ 5 VAC 5-10-420 E 2.

(3) That, on or before August 24, 1999, Virginia Power shall file with the Clerk of the Commission an original and ten (10) copies of any testimony and exhibits the Utility intends to present at the hearing, and shall simultaneously serve a copy thereof on John R. Fletcher, Esquire, and Michael B. Hamar, Esquire, Tavass, Fletcher, Maiden & King, P.C., 555 Main Street, 14th Floor, Norfolk, VA 23510; and

(4) That, on or before September 14, 1999, Virginia Linen shall file an original and ten (10) copies of any testimony and exhibits it expects to introduce in rebuttal to all of the direct prefiled testimony and exhibits of Virginia Power, and simultaneously send a copy thereof to Pamela Johnson, Esquire, and Karen L. Bell, Esquire, Virginia Electric and Power Company, P.O. Box 26666, Richmond, VA 23261-6666.

Alexander F. Skirpan, Jr.
Hearing Examiner